

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION,

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10 Debtor.

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13
14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 October 25, 2007

19 10:08 a.m.

20
21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
24
25

A P P E A R A N C E S :

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

Attorneys for Debtor

333 West Wacker Drive

Chicago, IL 60606

BY: JOHN WM. BUTLER, JR., ESQ.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

Attorneys for Debtor

Four Times Square

New York, NY 10036

BY: KAYALYN A. MARAFIOTI, ESQ.

ALBERT HOGAN, ESQ.

TOGUT, SEGAL & SEGAL, LLP

Attorneys for Debtor

One Penn Plaza

New York, NY 10119

BY: NEIL BERGER, ESQ.

1
2 KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP

3 Attorneys for Delphi Trade Committee

4 1633 Broadway

5 New York, NY 10019

6
7 BY: DANIEL N. ZINMAN, ESQ.

8
9 LATHAM & WATKINS, LLP

10 Attorneys for the Unsecured Creditors' Committee

11 53rd at Third

12 885 Third Avenue

13 New York, NY 10022

14
15 BY: MARK A. BROUDE, ESQ.

16
17 KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

18 Attorneys for Wilmington Trust Company

19 as indenture trustee

20 599 Lexington Avenue

21 New York, NY 10022

22
23 BY: EDWARD M. FOX, ESQ.

1
2 **LOWENSTEIN SANDLER PC**

3 **Attorneys for Securities Class**

4 **65 Livingston Avenue**

5 **Roseland, New Jersey 07068**

6
7 **BY: MICHAEL S. ETKIN, ESQ.**

8
9 **GOODWIN PROCTER**

10 **Attorneys for Castlerigg Master Investments Ltd**

11 **CR Intrinsic Investors, LLC**

12 **Davidson Kempner Capital Management LLC**

13 **Elliot Associates, L.P.**

14 **SPCP Group LLC**

15 **599 Lexington Avenue**

16 **New York, NY 10022**

17
18 **BY: ALLAN S. BRILLIANT, ESQ.**

19 **CRAIG P. DRUEHL, ESQ.**

1
2 **FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP**

3 **Attorneys for equity committee**

4 **One New York Plaza**

5 **New York, NY 10004**

6
7 **BY: BONNIE STEINGART, ESQ.**

8
9 **U.S. DEPARTMENT OF JUSTICE**

10 **Office Of The United States Trustee**

11 **33 Whitehall Street**

12 **New York, New York 10004**

13
14 **BY: ANDREW D. VELEZ-RIVERA, ESQ.**

1 P R O C E E D I N G S

2 THE COURT: Please be seated. Hi. Good morning.
3 Delphi Corporation.

4 MR. BUTLER: Good morning, Your Honor. Jack Butler,
5 Kayalyn Marafioti and Al Hogan here on behalf of Delphi
6 Corporation along with Neil Berger, co-counsel, for the 23rd
7 omnibus hearing in these Chapter 11 cases. Your Honor, we
8 filed an agenda listing the fifty matters for consideration at
9 today's hearing. We'd like to move in the agenda order.

10 THE COURT: That's fine.

11 MR. BUTLER: Thank you. Your Honor, the first item
12 on the agenda is the Saganaw Chassis asset sale motion filed at
13 docket number 9368. There have been some limited objections
14 filed. Your Honor will recall from prior hearings that the
15 Asset Purchase Agreement in this particular transaction has a
16 closing condition at Section 9180 which requires that TRW
17 Integrated Chassis Systems, LLC, as purchaser, is to enter into
18 a supply agreement with General Motors. That originally was to
19 occur by the close of business on September 26, 2007. Those
20 matters are still under discussion between General Motors and
21 TRW.

22 The debtors, at least at this time, are not prepared
23 to move forward with this transaction until we understand that
24 TRW and General Motors have agreed finally to the terms of that
25 transaction. And, therefore, we'd ask to move this matter to

1 the November 16th omnibus hearing.

2 THE COURT: Okay. And as I remember, the union
3 objection was no longer --

4 MR. BUTLER: Correct. We resolved that objection.

5 THE COURT: Right. Okay.

6 MR. BUTLER: So the only real --

7 THE COURT: The only issue is the negotiation between
8 TRW and GM?

9 MR. BUTLER: That's correct, Your Honor.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, the next matter on the
12 agenda is the Verizon administrative expense motion, and Mr.
13 Berger is handling that for the debtors.

14 MR. BERGER: Good morning, Judge.

15 THE COURT: Good morning.

16 MR. BERGER: Your Honor entered an order authorizing
17 the sale of the debtor's mobile area business unit previously.
18 Leading up to that sale there was a cure dispute between Mobile
19 Area and Verizon Services, Corp. concerning a GPS system and
20 services agreement between the parties. Your Honor's sale
21 order had a specific provision that preserved the right of
22 Verizon to assert the cure plans as administrative expense
23 claims, and that's what this motion is about.

24 I spoke with counsel for Verizon. Our business
25 people are gearing up to try to work together. We've agreed,

1 subject to Your Honor's consent, to adjourn this to the
2 November 29 omnibus hearing date. As part of the agreement to
3 adjourn that, we did, as the debtors, agree to file our
4 response by November 14th so there would be sufficient time for
5 Verizon to respond as well. So, subject to Your Honor's
6 consent, this matter will be moved to November 29.

7 THE COURT: All right. That's fine.

8 MR. BUTLER: Your Honor, matter number 3 on the
9 agenda is the Technology Properties 1318 motion filed at docket
10 number 10425. Your Honor, the way we would like to handle this
11 procedurally is to adjourn this to the November 16th hearing
12 for status only. If in fact Your Honor grants the solicitation
13 procedures motion on November 8th and establishes a 3018
14 hearing date for 3018 motions, then at the November 16th
15 hearing this would be moved to that date with all the other
16 3018 matters that may come before the Court.

17 THE COURT: Okay.

18 MR. BUTLER: Thank you. Your Honor, the next matter
19 on the agenda is matter number 4, the recently filed motion
20 filed at docket number 10449. This is the motion of Scott
21 Darrell Reiss (ph.) to allow payment of a claim and for other
22 relief. The debtors have filed an objection at docket number
23 10647. And the parties, prior to today's hearing, agreed to
24 move this to the claims track and have this heard at the
25 October 26th claims hearing.

1 THE COURT: Okay.

2 MR. BUTLER: Thank you, Your Honor. Your Honor, the
3 next matter on the agenda is matter number 5. This is the
4 Valeo settlement motion at docket number 10482. This involves,
5 Your Honor, the resolution of a pre-petition cause of action
6 from the debtor against a supplier in connection with some
7 warrantee and other claims arising from the supply of
8 multifunction electrical switches to DAS, LLC, which was then
9 used in steering column assemblies sold to customers.

10 I'm pleased to report, Your Honor, this matter has
11 been resolved by the payment of four million dollars by Valeo
12 to DAS, LLC to resolve these issues. The important aspects of
13 this particular transaction is that obviously the settlement
14 agreement needs to be approved by Your Honor; that's a
15 requirement by Valeo, and that the order become final and
16 nonappealable. They would make the payment to us. We would
17 grant releases to Valeo, and certain related persons and
18 entities, from further liability with respect to the switches
19 that are involved.

20 We would also represent to Valeo that DAS, LLC is the
21 sole owner of those claims and we'd indemnify Valeo from any
22 other claims that would come at them from some other party if
23 it was later determined that was not the case. That's the sum
24 and substance of the proposal, Your Honor. Valeo, I should
25 point out, continues to be a valuable supplier to the debtors.

1 And Mr. Sheehan, our chief restructuring officer, is here and,
2 Your Honor, could provide a proffer if you'd like, under 9019
3 as to why this is in the interest of the estate. But this
4 matter has been reviewed with our statutory committees and
5 there are no objections.

6 THE COURT: All right. Well, it seemed to me to be a
7 fairly complicated contract dispute involving many elements of
8 the party's business. And, frankly, I'm going to rely largely
9 on the committee's review as well as the debtor's heavy
10 involvement in the process in the first instance. Clearly the
11 settlement ends up in a net payment to the debtor, so I will
12 approve it.

13 MR. BUTLER: Thank you, Your Honor. Your Honor, the
14 next matter on the agenda, matter number 6, is the second IRS
15 pension funding waiver motion of the debtors at docket number
16 10483. Your Honor, this is an important matter for the
17 debtors. This completes the work that needed to be done with
18 respect to the fifth element of the five point transformation
19 plan the debtors announced back in March of 2006.

20 As you know, since the outset of these Chapter 11
21 cases, the debtors have been searching for ways to preserve
22 their pension programs, albeit frozen upon emergence but going
23 forward, and that's been something we've been working very hard
24 to do. That required government relief. And we have been
25 working very closely with the PBGC and with the IRS in

1 addressing these matters. And I'm very pleased to be able to
2 present this motion to you, which is uncontested, regarding the
3 second and we hope final, set of waivers from the IRS with
4 respect to the pension matters that we need relief on.

5 This particular waiver will, most importantly,
6 address the temporary waiver of minimum funding obligations
7 involving our hourly plan for the plan year ending September
8 30, 2007, and will, in conjunction with other opinions issued
9 to us by the IRS, facilitate the provision in our plan of
10 reorganization that would allow us to transfer certain hourly
11 pension obligations to General Motors under the GM settlement
12 agreements, pursuant to Section 414(1) of the Internal Revenue
13 Code, in exchange for the financing transaction set forth in
14 the GM settlement documentation.

15 That transaction, which is an important element of
16 our overall settlement with General Motors and an important
17 element of our pension preservation plan, is only able to be
18 accomplished if it's economically efficient. And without
19 trying to hold myself out as a pension expert here, the reality
20 is, having been involved in these discussions, there are
21 some -- when you look at the regulations and the requirements,
22 we in fact could have been in a position, without this waiver,
23 of trying to effectuate that transfer but still be responsible
24 for making payments in connection with the September 30, 2007
25 year, including related to the significant portion of

1 transferred liabilities under the hourly plan. That would have
2 made that entire transaction not economically attractive to the
3 debtors or to their reorganization. And so being able to work
4 out these waivers is extremely important to our overall
5 transformation objectives.

6 The second waiver includes a series of terms,
7 including a time line by which we must complete the
8 reorganization. We're well on our way in connection with the
9 Chapter 11 plan that they require to be filed by the end of
10 this year, and we've already filed. They have required that we
11 satisfy any minimum funding requirements for the plan ending
12 September 30, 2007, within five days following the effective
13 date of a plan. That has to occur. That is, the effective
14 date has to occur no later than February 29, 2008 in order for
15 us not to have to go back and renegotiate these waivers. And
16 there is a requirement that we contribute twenty million
17 dollars to the hourly plan within five days following the
18 effective date, in addition to other payments, in addition to
19 the twenty million in accelerated contributions that we agreed
20 to under the first waivers.

21 Your Honor may also recall, in connection with the
22 first waivers the Court approved, that we provided the PBGC a
23 right to hold a hundred million dollar letter of credit that
24 was drawable under certain conditions. There's nothing in
25 these waivers that would affect the PBGC's rights in those

1 respects with respect to the first waivers.

2 THE COURT: And you're not adding any additional LC?

3 MR. BUTLER: We are not, Your Honor. Your Honor,
4 given the importance of this, I would like to just briefly
5 introduce into the evidentiary record seven exhibits which have
6 been provided to the Court. These would include, Exhibit 1 is
7 the letter dated September 28, 2007 that grants the second
8 pension funding waiver. Exhibit 2 is the letter dated October
9 4th which grants Delphi's request for modification of the
10 conditional waiver of minimum funding standard for the hourly
11 plan for September 30, 2006 for that particular year. Exhibit
12 3 is another letter of the same date, October 4, granting also
13 a Delphi request for modification for the salary plan for the
14 plan year ending September 30, 2006. Exhibit 4 is a letter
15 dated July 13, 2007 which granted Delphi's waiver for a
16 modification of conditional waivers relating to the hourly
17 plan. And Exhibit 5 is another letter dated July 13, 2007 --
18 these are all from the Internal Revenue Service Your Honor --
19 granting a request for a modification of the conditional waiver
20 for the salary plan. There's also a declaration of Mr.
21 Sheehan, I explained the business purposes of these
22 transactions for the debtors, at Exhibit 6 and then the notice
23 of service and the affidavits, Exhibit 7, Your Honor. I'd like
24 to move those exhibits into evidence in this hearing.

25 THE COURT: Okay. Does anyone have any objection to

1 the admission of those exhibits? Does anyone want to cross-
2 examine Mr. Sheehan? All right. I will admit the exhibits.
3 (IRS letter dated 9/28/07 granting the second pension funding
4 waiver was hereby received as Debtor's Exhibit 1 for
5 identification, as of this date.)

6 (IRS letter dated October 4th granting Delphi's request for
7 modification of the conditional waiver of minimum funding
8 standard for the hourly plan for 9/30/06. was hereby received
9 as Debtor's Exhibit 2 for identification, as of this date.)

10 (IRS letter dated October 4th granting Delphi's request for
11 modification for the salary plan for the plan year ending
12 9/30/06 was hereby received as Debtor's Exhibit 3 for
13 identification, as of this date.)

14 (IRS letter dated 7/13/07 granting Delphi's request for a
15 modification of conditional waivers relating to the hourly plan
16 was hereby received as Debtor's Exhibit 4 for identification,
17 as of this date.)

18 (IRS letter dated 7/13/07 granting a request for a modification
19 of the conditional waiver for the salary plan was hereby
20 received as Debtor's Exhibit 5 for identification, as of this
21 date.)

22 (Declaration of Mr. Sheehan was hereby received as Debtor's
23 Exhibit 6 for identification, as of this date.)

24 (Notice of service and the affidavits was hereby received as
25 Debtor's Exhibit 7 for identification, as of this date.)

1 THE COURT: I had a couple of questions related to
2 this. First, are the debtors reasonably confident that they
3 will be able to meet the deadline for this particular waiver,
4 the February deadline?

5 MR. BUTLER: Your Honor, we certainly hope to be able
6 to do that. We filed an 8-K last week, indicating that the
7 company plans to emerge during the first quarter of 2008. We
8 have a timetable. Your Honor may recall that in connection
9 with the disclosure settlement, the timetable, not later than
10 November 7th the debtors are required to file publicly a
11 schedule, a modified schedule, of how the timetable would work
12 and what the plan emergence date is.

13 Your Honor has indicated that assuming we're able to
14 go forward with the November 8th disclosure statement hearing,
15 that there would be a disclosure or a confirmation hearing in
16 the second week of January of 2008. That should allow us to
17 emerge, even conducting rights offerings, by the end of
18 February. That, like everything else in these matters, there
19 are many, many stakeholders with many disparate interests and
20 as we try to sort through all those matters, we may or may not
21 have a seriously contested confirmation hearing in process.
22 And we'll have to sort through all of that. We continue to try
23 to work on those matters.

24 But the debtors certainly anticipate before the
25 February 29th date if we can. We've set publicly the first

1 quarter, because we don't want to hold ourselves to specific
2 dates. But we are mindful and we have reminded our
3 stakeholders that in addition to the macroeconomic risks that
4 exist in the capital markets and elsewhere, there are a series
5 of event risks that we need to manage in the first quarter of
6 2008. And we're mindful of those. We're working hard to do
7 them, and I would say that we have made very substantial
8 progress along those lines.

9 THE COURT: Okay. And I guess implicit in that
10 answer is that the debtors are reasonably comfortable that
11 they'll also be able to meet the funding condition set forth in
12 the waiver?

13 MR. BUTLER: Yes, Your Honor. I believe the plan of
14 reorganization that we filed on September 6th, including any
15 modifications that the debtors plan to file later this month,
16 will in fact -- I think the company believes that if that plan
17 is confirmed and we go effective on that plan, we will be able
18 to meet the conditions set forth in the waivers.

19 THE COURT: Okay. And then my last question, and I
20 believe you gave me the answer to this in connection with the
21 first waiver, but let me ask it anyway. What is the basis for
22 the twenty million dollar, ten million, ten million, twenty
23 million dollar amount?

24 MR. BUTLER: The short answer, Your Honor, it's the
25 product of a negotiation between the government and the company

1 and consideration of the government in granting these waivers.
2 So the government isn't, as you know, obliged to grant these.
3 And the government believed that providing some accelerated
4 funding into these programs was appropriate.

5 THE COURT: On the other hand, the cost of not
6 getting the waiver would have exceeded that amount in terms
7 of --

8 MR. BUTLER: Yes, Mr. Sheehan's declaration indicates
9 the inability, for example, to have gotten the second pension
10 funding where it is before the Court now would have essentially
11 made a billion-five transaction, which is one of the major
12 elements of our fabric of the reorganization settlement, not
13 economically efficient.

14 THE COURT: Okay. All right. Does anyone have
15 anything to say on this motion? All right. I will approve it
16 for the reasons stated in the motion and on the record.

17 MR. BUTLER: Thank you, Your Honor. Your Honor, the
18 next matter before the Court, matter number 7 is the Interiors
19 and Closures business' sale motion filed at docket number
20 10606. Your Honor, this agreement contemplates a global
21 divestiture of the company's cockpits and interior systems
22 business and its integrative closure systems business to the
23 proposed purchasers for consideration in the amount of
24 approximately of 106 million dollars. This is comprised of a
25 preliminary purchase price of approximately 80 million dollars,

1 subject to certain adjustments, and a post closing set of
2 payments, series of payments, or earnout as I would call them,
3 of approximately 26 million dollars. This proposed sale is
4 subject to approval by this Court and additional competitive
5 bidding pursuant to the proposed bidding procedures. Those
6 bidding procedures are the primary subject of the hearing
7 today, as well as the bid protections for the purchasers.

8 The proposed purchaser is Inteva Products LLC, which
9 is a wholly owned entity of the Renco Group, Inc. Your Honor,
10 if the Court approves these bidding procedures, which are
11 substantially similar to procedures we've used for other
12 divestitures in this case where we've employed a two-step
13 process. We would in fact have a bid deadline of November 26,
14 2007. There would be an auction on or about December 6, 2007,
15 and the sale hearing would occur at the December omnibus
16 hearing, which is presently scheduled for December 20, 2007.

17 There are bid protections proposed in this order to
18 be approved by Your Honor, if Your Honor is prepared to move
19 forward with this two-step approach which would provide the
20 purchaser with a break-up fee protection which consists of the
21 lesser of 2.4 million, which is calculated at three percent of
22 the preliminary purchase price, or 2.3 percent of the total
23 purchase price if you use the earnout, if you count the
24 earnout, or three percent of the post termination alternative
25 transaction purchase price. That would be the price that we

1 obtain from someone else within twelve months. The lesser of
2 those two amounts would be payable to the purchasers and it
3 would be payable only in the event that the seller debtor
4 entities consummated an alternative transaction within twelve
5 months after the termination of the agreement.

6 There's also an expense reimbursement provision which
7 is two-tenths of a percent of the purchase price, or 250
8 thousand dollars. And as the motion indicates, there's a
9 series of other conditions that might occur, ranging from the
10 timing of closing, approval of sale orders, and other events
11 under the agreement that would give rise to the payment of that
12 expense reimbursement.

13 I would characterize the payment of that expense
14 reimbursement as more likely than not or more probable than not
15 in terms of as you work through it, in the sense that the
16 passage of time could in fact, in and of itself, cause the
17 expense reimbursement provision to be paid.

18 I would also point out to Your Honor that with
19 respect to this matter we received comments from both the
20 creditors' committee and from the UAW. In the case of the
21 committee, the committee asked us to lower the bid increments
22 to 500 thousand dollars from one million, which has been
23 accommodated in the revised order.

24 And the UAW requested a modification to Section 6.6
25 of the agreement, which -- or I should say 6.6 of the agreement

1 notice, which required -- deals with -- and I'll just read the
2 language in the record. It states now "qualified bidders
3 should note that Section 6.6 of the agreement addresses, among
4 other things, the terms and conditions of employment of UAW
5 represented employees. And these issues remain subject to the
6 party's rights and obligations related to bargaining with the
7 UAW." And that, of course, comes in part, Your Honor, from the
8 labor MOUs approval order in this Court, which is a final order
9 of this Court.

10 Those are the only changes, Your Honor, to the
11 package as it was originally filed before the Court. In terms
12 of the -- given the size of this, this is probably the second
13 largest of the transactions, the various non-core divestitures,
14 Your Honor, that we'll bring to you as part of the third tenant
15 of our transformation plan, again, announced back in March of
16 2006, which said that we would identify core, non-core assets
17 and we would divest those non-core assets. Those divestitures
18 have in every case required cooperation from our unions and
19 from General Motors, who is the primary customer for those
20 plants and those businesses here in North America. And this
21 one is the second largest.

22 We have a series of exhibits in connection with this
23 matter we've provided the Court. There are just six of them.
24 Exhibit 1 is the agreement, Exhibit 2 through 4 are the
25 motions, form of orders and the black lines. There is a

1 declaration from Mr. Sheehan to support this because this is an
2 expedited motion at Exhibit 5. And Exhibit 6 is the affidavit
3 of service involving the service of these matters in accordance
4 with the case management order. Your Honor, I'd move into
5 evidence exhibits 1 through 6.

6 THE COURT: Okay. Does anyone have any objection to
7 the admission of those exhibits? Does anyone wish to cross-
8 examine Mr. Sheehan on his declaration? Okay. I will approve
9 the admission of the exhibits.

10 (Agreement was hereby received as Debtor's Exhibit 1 for
11 identification, as of this date.)

12 (Motions, form of orders and black lines was hereby received as
13 Debtor's Exhibits 2 - 4 for identification, as of this date.)

14 (Declaration from Mr. Sheehan was hereby received as Debtor's
15 Exhibit 5 for identification, as of this date.)

16 (Affidavit of service was hereby received as Debtor's Exhibit 6
17 for identification, as of this date.)

18 MR. BUTLER: Thank you.

19 THE COURT: Does anyone have anything to say on the
20 motion? All right. I will grant the relief sought today
21 pursuant to the motion, which is approval of the bidding
22 procedures and the break-up fee and expense reimbursement
23 provisions as well as the notice provisions. I'm comfortable
24 with the formulation of the break-up fee. The expense
25 reimbursement could conceivably be viewed as simply a reduction

1 to the purchase price. But the motion makes it clear that the
2 sale has already been extensively marketed and that the debtors
3 believe this is the best, at least the best stalking horse. So
4 I'm quite comfortable approving the relief sought today.

5 MR. BUTLER: Thank you, Your Honor. Your Honor, the
6 next matter is matter number 8 on the agenda. This is another
7 divestiture related motion. It's the steering entity's
8 formation motion. It's found at docket number 10608, and it
9 involves procedural steps that we need to take from a corporate
10 planning perspective in connection with the disposition of our
11 largest non-core business. And it's really important, I think,
12 in connection with the steering business, when we talk about
13 the steering business, and we'll talk about it more in the
14 coming days and weeks.

15 The steering business is a nonstrategic business for
16 the company going forward. But it's a very large, very
17 important business in terms of its global reach. It is a
18 company that we think is important to market and move forward
19 with as a going concern. It, we think, has significant value
20 to our customers and to our unions. There are many thousands
21 of people employed there, principally by the UAW, but also by
22 others, and we have worked very, very hard to sort out an
23 appropriate disposition of the steering business, and we expect
24 to come to the Court before the end of the year with a
25 transaction in dealing with that.

1 In preparing for that transaction, there are many,
2 many things that we need to do, given the global nature of the
3 steering business, in terms of various platforms we have to
4 deal with and various countries we have to deal with.

5 This particular motion deals with asking for
6 authority to establish two new U.S. entities which would not be
7 debtors, in order to have them hold an interest in a Mexican
8 entity, which in turn would hold permits and licenses required
9 in Mexico in order to be able to operate that business in
10 Mexico. One of them, most importantly, is an explosives
11 permit. That transaction under Mexican law requires that there
12 be at least two shareholders in connection with that particular
13 transaction. And, therefore, we have sorted out an appropriate
14 structuring transaction to do that.

15 That's the purpose of this motion. We have reviewed
16 this with our statutory committees. The creditors' committee,
17 in particular, has taken a considerable amount of time -- and
18 when I say considerable amount of time I should probably say a
19 considerable amount of effort, because this has been done in a
20 short period of time -- to examine this and examine the
21 background behind it, and I believe counsel wishes to comment
22 on this particular motion.

23 We are grateful to the committee that they are
24 supportive of this and that they are prepared to have this
25 motion go forward. It is, of course, subject to their

1 reservation of rights to challenge how proceeds might be
2 allocated down the line when the sale occurs. They're not
3 agreeing that because we needed to go through and establish
4 these particular companies that that somehow is dispositive
5 from an allocation of proceeds matter when that final agreement
6 comes to the Court. But I think they recognize, having
7 completed the due diligence, as the debtors do, that this is an
8 important step in terms of preparing the company for sale. So,
9 Your Honor, with that in mind, are there any comments, Mr.
10 Broude, you'd like to make in connection with the motion?

11 MR. BROUDE: Your Honor, Mike Broude, Latham &
12 Watkins on behalf of the committee. Mr. Butler is correct. We
13 spent a lot of time looking at this from both a structural and
14 economic perspective. And our only issue is just making sure
15 that since the steering business in Mexico is currently owned
16 by Delphi Automotive Systems (Holding), Inc., or DASHI, and
17 these two new companies may or may not be owned by DASHI, that
18 that not affect this sort of transfer or movement of value from
19 one place to another. We'll, you know, look at that in the
20 context of any actual transaction. But I just wanted to make
21 sure that that reservation of rights was clear.

22 THE COURT: Okay. And these are truly supposed to be
23 holding companies, right?

24 MR. BROUDE: Yeah.

25 THE COURT: This is their sole function, really is to

1 own this stock?

2 MR. BROUDE: That's correct, Your Honor.

3 THE COURT: And how are you going to, practically
4 speaking, reserve the rights as to allocation?

5 MR. BROUDE: Well, there will be a motion at some
6 point filed before the Court seeking to approve a transaction,
7 as has been the case with prior transactions where there have
8 been both debtor and nondebtor sellers. Part of that motion,
9 part of the acquisition agreement will involve an allocation of
10 proceeds across debtors and nondebtors and, you know, across
11 particular sellers. In that context we'll review that to make
12 sure that there isn't any inordinate amount of value being
13 allocated to the permit that this entity holds.

14 MR. BUTLER: And, Your Honor, the debtors have agreed
15 we're not going to use this motion, if Your Honor grants this
16 motion, as dispositive in any way to that allocation discussion
17 that we would have with the committee, as we've had with them
18 on every transaction we've brought --

19 THE COURT: Notwithstanding the potential ownership
20 now of the stock in someone else's --

21 MR. BUTLER: Correct, Your Honor.

22 THE COURT: -- bailiwick. Okay. Okay.

23 MR. BUTLER: This is being done -- without being able
24 to move forward with this transaction, we would seriously
25 impair the value that could be --

1 THE COURT: Right.

2 MR. BUTLER: -- from this transaction. So --

3 THE COURT: Okay. All right. Well, the rational for
4 the relief sought is clear and beneficial to the debtor, so
5 I'll approve the motion, having noted the reservations of
6 rights that have been confirmed on the record.

7 MR. BUTLER: Thank you, Your Honor. Your Honor, the
8 next matter on the agenda is matter number 9. This is the MDL
9 and Insurance settlement approval motion at docket number 9296.
10 There are two objections that have been filed by the Goodwin
11 Procter firm on behalf of a group of bondholders, one at docket
12 number 10687, the other at docket number 10689. The debtors
13 have filed yesterday, in accordance with the case management,
14 our reply to that matter.

15 This particular motion before the Court today, or the
16 relief we're seeking before the Court today, has changed from
17 the time that we originally filed the MDL and insurance
18 settlement approval motion. We have spent a great deal of time
19 over the last number of weeks consulting with the official
20 committee of unsecured creditors, our creditors' committee, the
21 security's lead plaintiffs, the ERISA named plaintiffs, and a
22 series of other ad hoc committees and advisors. We've also
23 discussed the form of order with the equity committee in terms
24 of the equity committee's rights being preserved, and I'll
25 address that in a few minutes.

1 And we have, in reviewing those matters and trying to
2 sort out our time table, we have concluded as the company, that
3 we would ask the Court to consider a bifurcated approval
4 process here, pretty much in the same way the district court
5 has dealt with the bifurcated approval process of this matter
6 in the district court.

7 As Your Honor may recall back on September 5th, the
8 district court gave preliminary approval to the MDL motions
9 there and set final approval hearings for mid-November of this
10 year, which were the fairness hearings and the right for people
11 to object to the merits of the proposed settlements.

12 In the preliminary approval order heard in the
13 district court, the district court, among other things,
14 certified classes and granted a series of other relief,
15 approved notices, and set forth all the procedural mechanics,
16 if you will, of moving that motion forward.

17 We believe that it is appropriate to do the same
18 thing in this Court at this time and, therefore, similar to the
19 bifurcated process that was utilized by Judge Rosen, which
20 preliminarily approved the security stipulation and the ERISA
21 stipulation back on September 5th, we would ask the Court
22 today, this Court, to preliminarily approve this motion at this
23 stage only under two circumstances. First, that Your Honor
24 determines that the relief we seek in this preliminary order
25 should be granted at this time. And that relief, I'll go

1 through, is, I believe, procedural in nature but important to
2 the company. It deals with certifying classes. It deals with
3 who we need to solicit going forward. It addresses who can
4 vote in connection with the plan as it relates to this
5 particular -- the MDL plaintiffs. We think it's quite
6 important to get that established now and grant the other
7 relief that's set forth in the motion.

8 And we also think, just as Judge Rosen dealt with in
9 the district court, that the relief sought in the motion, that
10 by preliminarily approving this, you should only do it if Your
11 Honor believes that the relief sought in the motion was capable
12 of final approval at the confirmation hearing on the debtor's
13 plan of reorganization, but subject in all respects to the
14 Court's consideration of any objections filed by the potential
15 objectors, whose rights are fully preserved under paragraph 13
16 of the preliminary order.

17 Paragraph 13 of the preliminary order has been
18 carefully negotiated with all of the potential objectors and
19 there is only one set of potential objectors, that is the group
20 or committee, as we believe they are operating, represented by
21 Goodwin Procter, who continues to press an objection, and we'll
22 deal with that during this contested hearing.

23 We think it is noteworthy that none of the other
24 potential objectors, that is neither of the statutory
25 committees, the U.S. Department of Labor, Wilmington Trust

1 Company as indenture trustee, or the ad hoc committee of trade
2 creditors, share the ad hoc bondholder committee's views on
3 this preliminary order, and we believe are satisfied with the
4 preliminary order in the form submitted to the Court for
5 consideration.

6 I should note, Your Honor, in connection with the
7 equity committee, who may have arguably waived their right to
8 object to this, in discussions with the equity committee
9 following up from the colloquy we had on the record last time
10 when this matter was before the Court, the company decided that
11 it was appropriate, particularly given this bifurcation
12 approach, for the equity committee, as one of our official
13 statutory committees, have the right and all of the privileges
14 of a potential objector. And this order provides that they'll
15 be deemed a potential objector and they will have all of those
16 rights reserved to them at the confirmation hearing to object
17 to the merits of this, in the same way all of the other
18 potential objectors were. And this order specifically provides
19 for those rights.

20 THE COURT: Okay. That's good.

21 MR. BUTLER: Your Honor, in terms of the actual
22 relief, we provided a draft order to the Court. I can walk
23 through it, but I think it's pretty clear what we're seeking in
24 the particular matter. And maybe the appropriate thing to do
25 now would be to cede the podium to Mr. Brilliant and let him

1 press his objections, and then we'd be able to respond to them
2 and walk through the order.

3 THE COURT: Well, there was one point, one question I
4 had to you on the proposed order. And I think it's probably
5 worth going through that now.

6 MR. BUTLER: Sure.

7 THE COURT: I had a couple other comments on it too.
8 But if you turn to page 5, paragraph J. This is the paragraph
9 that basically recites what you intend to do as far as the
10 seeking final approval of the settlements. And the question I
11 had is, and it's a little vague right now, it says "The debtor
12 has further stated that with the concurrence of the security's
13 lead plaintiffs and the ERISA named plaintiffs, the debtors
14 will seek final approval of the settlements contemplated by the
15 security stipulation, the ERISA stipulation and the insurance
16 stipulation." And I assume the final approval is in respect of
17 the other objectors --

18 MR. BUTLER: Right.

19 THE COURT: -- the people's whose rights have been
20 preserved --

21 MR. BUTLER: Correct.

22 THE COURT: -- as part of the debtor's plan of
23 reorganization, and in the confirmation order. And my question
24 is is that what you really mean -- or do you really mean to say
25 at the same time that they seek confirmation of the plan and

1 that such approval, if granted, would be incorporated in the
2 confirmation order? And the reason I ask that is that some
3 settlements, like the GM settlement, are literally part of the
4 plan. Other settlements, sort of stand on their own; they only
5 make sense in the context of a plan. But I had viewed this
6 settlement as one that falls into the latter category i.e. it
7 stands on its own merits. People aren't voting on it, in
8 essence, but it only makes sense in the context of a plan that
9 contemplates it. But I don't know what the parties had in mind
10 on that point.

11 MR. BUTLER: Well, I think from the debtor's
12 perspective, if you go back and look at our September 6th plan,
13 the plan in fact includes the MDL settlements as a dependency
14 to the plan, just like it does with the GM settlement and the
15 labor settlements. It does incorporate them into the plan and
16 in fact the treatment of those stakeholders is built into the
17 treatment section, and people vote on that.

18 I know, and Mr. Broude may have his own views and
19 want to express this, but I know in my conversations with his
20 colleague, with Mr. Rosenberg, that one of the things that was
21 important, that that committee has expressed to us, is that the
22 committee wanted this taken up at the confirmation hearing in
23 the context of the votes being in on the plan.

24 THE COURT: I understand that, and I understand that
25 that's the whole purpose of this two-step process is that it

1 gives everyone a chance to put it in a context. But at the
2 same time, particularly since you had previously noticed this
3 for approval --

4 MR. BUTLER: Right.

5 THE COURT: -- and in this motion, those who didn't
6 object, you're seeking to, in essence, well not in essence,
7 you're seeking to bar from objecting.

8 MR. BUTLER: Absolutely.

9 THE COURT: If it's part of a plan, I'm not sure how
10 far that bar goes, because they could still object to the plan.
11 On the other hand, if it's in the context of a plan, their
12 rights are only to object to the plan, but as far as the
13 settlement is concerned, they can't object to that settlement.
14 Of course, the objectors, the preserved objectors, can do both.

15 MR. BUTLER: Right. I think we viewed that as being
16 the process, Your Honor, that in fact the only people that can
17 object to the MDL are those people who reserved their rights to
18 do it. And we also wanted to make clear that people who wanted
19 to object to the plan itself, that this order wasn't precluding
20 them from objecting --

21 THE COURT: Right, but it --

22 MR. BUTLER: -- to the plan, no matter who they were.

23 THE COURT: But if this is part of the plan, I'm not
24 sure how you can bar people from objecting to the settlement
25 without barring them from objecting to the plan. I don't think

1 that's what you intended to do.

2 MR. BUTLER: No. I'm certainly comfortable with the
3 formulation, Your Honor, the Court suggested. What we were
4 really trying to achieve here, frankly, in these discussions,
5 was to achieve a result the creditors' committee wanted us to,
6 which was they wanted to be able to address this at the
7 confirmation hearing and have the results of that hearing
8 incorporated into the confirmation order. I think I have that
9 right, Mr. Broude, right?

10 MR. BROUDE: Yes, Your Honor. I think you do. And
11 part of the problem is we don't -- the creditors' committee, we
12 don't think that you can object to or evaluate the settlement
13 in a vacuum. It has to be in the context of a particular plan.

14 THE COURT: I understand that.

15 MR. BROUDE: And to -- you almost have sort of a
16 chicken and an egg problem if you're seeking to have the
17 settlement approved except in the context of confirming
18 particular plans --

19 THE COURT: Well, let me read you the language again.

20 MR. BROUDE: Sure.

21 THE COURT: Because I think it's consistent with
22 that, which is that I would put in, instead of "as part of" I'd
23 say "at the same time that they seek confirmation of the plan
24 of reorganization and that such approval, if granted, would be
25 incorporated in the confirmation order." So it does all happen

1 at the same time. But I think it's more than just an angels on
2 the head of a pin difference in that as far as the people who
3 haven't objected --

4 MR. BROUDE: Your Honor, I am certainly not opposed
5 to whatever the debtors need to do to make sure that those who
6 have not objected, or are not in the potential objector group,
7 are not permitted to object to that element of the plan. I
8 think we may, to a certain extent, have a metaphysical issue
9 here as opposed to a substantive one.

10 THE COURT: Okay.

11 MS. STEINGART: Good morning. Bonnie Steingart from
12 Fried, Frank on behalf of the equity committee. I think it's
13 slightly more than a metaphysical issue. Part of the
14 settlement to the MDL include payments from the debtor's
15 estate. And because of that, the propriety of those
16 distributions are an integral part of the debtor's plan. So
17 there are amounts for which the debtor takes the position that
18 it's not part of the estate, others part of the estate. And
19 because of that I'm not sure the debtors can cut off rights to
20 object as the plan changes. But that's a different issue and
21 that's an issue that the Court and the debtors will deal with
22 as people may object. But the settlement itself can have no
23 vitality and really cannot be approved in terms of involving
24 the debtor's assets outside of the plan.

25 THE COURT: Well, it's to be embodied in a plan. I

1 understand that. But in terms of the process for evaluating
2 it, I think you can do it either way. And quite properly, I
3 think the debtor has agreed to let those who wanted to preserve
4 their rights do that.

5 MR. BUTLER: And, Your Honor, in response to Ms.
6 Steingart, she and, I think, probably don't agree on this
7 point. I think the debtors have chosen not to press this point
8 at this time.

9 THE COURT: And it may never be pressed.

10 MR. BUTLER: Right.

11 MS. STEINGART: Right.

12 MR. BUTLER: The debtors actually believe this can
13 be --

14 MS. STEINGART: That's what we're hoping.

15 MR. BUTLER: -- approved outside of a plan. Our view
16 was that we don't, you know -- we have tried in this case not
17 to ask this Court to make rulings or decisions on things that
18 don't matter.

19 THE COURT: All right.

20 MR. BUTLER: And, ultimately, if that issue doesn't
21 matter at the point, in part because we spent time negotiating
22 with the ERISA plaintiffs and the MDL plaintiffs who were
23 prepared to amend their settlement agreement in the district
24 court to allow us to bifurcate, which was a concession from the
25 agreements and the requirements set forth. Without that, we

1 would be in a different position here. And I should point out
2 that there was an extensive discussion with them and they
3 considered it with their clients and agreed to this
4 bifurcation, which is essentially putting them through four
5 hearings in two courts --

6 THE COURT: Right.

7 MR. BUTLER: -- as opposed to it. But I think they
8 understood and I give the creditors' committee credit for this,
9 I think there was a wisdom in the committee's approach to this.
10 And I thought it was thoughtful. We told the plaintiffs that.
11 I think they concurred with that. And so what you have before
12 you is the product of that. And we're certainly comfortable,
13 Your Honor, with the modified language that the Court's
14 proposing.

15 THE COURT: Okay. All right. So why don't I hear
16 then from Mr. Brilliant?

17 MR. BUTLER: So I think Mr. Brilliant is up next,
18 Your Honor.

19 THE COURT: Okay.

20 MR. BRILLIANT: Good morning, Your Honor. Allan
21 Brilliant on behalf of Castlerigg Master Investments Ltd.,
22 CR Intrinsic Investors, LLC, Davidson Kempner Capital
23 Management LLC, Elliot Associates, L.P. and SPCP Group LLC.
24 Your Honor, as a preliminary matter, you know, the debtors, you
25 know, say that we're a committee. You know, we obviously

1 dispute that. The debtors have indicated that they're going to
2 file a motion under 2019. When they file that, we'll respond
3 to it. Your Honor presumably will rule on it. But we both
4 agree that it's not subject to a decision today. And all we
5 say on that point at this point is that just as the debtors
6 reserve all their rights with respect to the issue, we do so as
7 well.

8 The motion that has been filed, Your Honor, in
9 connection with the MDL settlement, seeks extraordinary relief.
10 It seeks to elevate claims that are statutorily subordinate,
11 pursuant to the Bankruptcy Code under Section 510(b), to being
12 general unsecured claims.

13 The relief requested is expressly contrary to binding
14 authority in the Second Circuit in the Iridium case which, you
15 know, states that whether or not a settlement is fair and
16 equitable is the most important factor in determining, under
17 Rule 9019, whether or not a settlement should be approved. And
18 the Court found that specific credible grounds to justify the
19 deviation from absolute priority needs to be provided in order
20 to justify a court approving such a settlement.

21 Here in their motion the debtors do not provide such
22 specific credible, you know, grounds in order to justify a
23 deviation. At this point in time, whether pursuant to a plan
24 that may or may not be confirmed by Your Honor, or just
25 generally under Rule 9019, why should creditors who are

1 statutorily subordinate be treated as general unsecured
2 creditors for purposes of distribution under a plan of
3 reorganization because the relief that they seek, you know,
4 doesn't meet the standards set out by the Second Circuit in the
5 Iridium case? We don't believe that the Court should enter any
6 order with respect to the motion until a final hearing, whether
7 it be on an interim basis or as they call it, a preliminary
8 approval, or on a final basis, until the debtors have
9 established that relief, you know, is in fact, you know,
10 justified.

11 In addition, Your Honor, you know, we believe that
12 the hearing today is still premature. Effectively, what the
13 debtors say -- and we'll go through the order, because I
14 believe that what they're seeking pursuant to the order, you
15 know, is very different than what they say in their papers.
16 But what they're seeking today is premature. We have a plan
17 that's on file. They've said they're going to modify it on
18 Monday. There's going to be a hearing on November 8th in
19 connection with approval of a settlement statement. And,
20 effectively, at this point among other things -- and it's the
21 among other things that are most troubling to my clients -- but
22 among other things, they're seeking at this point under Rule
23 3018(a), presumably -- they don't say in their order, but
24 presumably under 3018(a) -- to have the claims authorized for
25 purposes of voting of these class action plaintiffs as general

1 unsecured claims pursuant to a plan of reorganization that is
2 not currently on file. They have a plan on file, but they have
3 acknowledged many times it's going to be amended. And we have
4 no idea at this point whether it's going to be amended with
5 respect to, you know, treatment of the MDL or other classes.
6 We understand --

7 THE COURT: Well, it wouldn't be amended as to the
8 treatment of the MDL, because they could only vote pursuant to
9 the terms of the settlement which incorporates the settlement
10 into any plan. They're not, under this order, allowed to vote
11 on anything other than a plan that has a settlement in it.

12 MR. BRILLIANT: That's right, Your Honor. But under
13 this plan, any amended plan or any subsequent plan, if Your
14 Honor were to deny confirmation of the current plan or any
15 amended plan all the way into the future without this order
16 that they would ask Your Honor to enter today, you know, ever,
17 you know, terminating at all. The order would continue into
18 effect during the entire pendency of this case so long as the
19 debtors propose, you know, an order that, you know, contains
20 the terms of the settlement.

21 But the key thing, Your Honor, here is that under
22 Rule 3018(a), ordinarily a court will not allow someone to
23 temporarily have the right to vote on a claim except under a
24 specific plan. And here they're seeking to have that, under
25 the current plan that's on file, any amended plan, which

1 presumably will be filed on Monday, and any future plan, even
2 if that plan wouldn't be confirmed. One of the things that we
3 had requested --

4 THE COURT: But they're in a separate class and the
5 vote doesn't count if the settlement isn't approved.

6 MR. BRILLIANT: Your Honor --

7 THE COURT: And it's only in connection with a plan
8 that has an MDL settlement -- the MDL settlement in it. I
9 don't see why this is anything more than a provisional vote.

10 MR. BRILLIANT: Your Honor, we had asked that there
11 be language in there that specifically said that if the
12 settlement wasn't approved that the vote wouldn't count. They
13 rejected the comment.

14 THE COURT: It's already there.

15 MR. BRILLIANT: It's not, Your Honor. The
16 determination provisions in the order do not provide, you know,
17 that the vote wouldn't count.

18 THE COURT: But the vote doesn't matter. It's in a
19 separate class. All they're saying is reaffirming their
20 support for the settlement. It's a technical thing so that
21 they're not objecting to the plan. They're actually voting in
22 favor of the plan. But it doesn't affect any calculus of
23 anyone else's right to vote because they're in a -- they're in
24 their own class.

25 MR. BRILLIANT: Your Honor --

1 THE COURT: I understand. If for some reason they
2 needed an accepting impaired class to confirm the plan there
3 might be an issue, but that's where you can designate the vote
4 for gerrymandering purposes. But that's not what's going on
5 here.

6 MR. BRILLIANT: Right. Well, Your Honor, maybe we
7 should, you know, turn to the order.

8 THE COURT: Maybe we should.

9 MR. BRILLIANT: We don't believe that at this point
10 in time, you know, based upon the fact that Your Honor, you
11 know, should approve the entire motion on a preliminary basis.
12 And we believe that notwithstanding what they're saying in
13 their motion, that when you look at the form of the order that
14 they're proposing, that is in fact what they are seeking to do.
15 Your Honor, if you look at, you know, the title, you know, of
16 the order, it's "Order preliminarily approving multi-district
17 litigation and insurance settlement." Now, we had asked them
18 to change it to say "Order preliminarily approving certain
19 provisions of the multi-district litigation and insurance
20 settlement." And they refused to do that. You know, we said
21 well, but that -- you're saying that it's only approving
22 certain mechanics.

23 THE COURT: I don't have any problem with that,
24 except that it is being approved as to those who didn't object.

25 MR. BRILLIANT: Well and then maybe Your Honor can

1 say that it's not being approved as to those who didn't object.
2 But at least with respect to everybody else --

3 THE COURT: Well --

4 MR. BRILLIANT: Your Honor should not be giving
5 your --

6 THE COURT: Don't we all really know what's happening
7 here? I mean, do we really have to be that specific and
8 lengthen the terms of the order with unnecessary clauses?

9 MR. BRILLIANT: Your Honor, you know, I don't --

10 THE COURT: Particularly when you have a settlement
11 that's heavily negotiated between about forty-five different
12 parties?

13 MR. BRILLIANT: Your Honor, we believe this is
14 substantive. You know, Mr. Butler in his presentation and in
15 their reply, you know, said that Your Honor shouldn't approve
16 this unless you believe that it is being capable of being
17 approved --

18 THE COURT: I agree with that.

19 MR. BRILLIANT: And so we believe --

20 THE COURT: I think that's your only legitimate point
21 here. I really do.

22 MR. BRILLIANT: Okay.

23 THE COURT: Unless you can point me to some other
24 language that somehow prejudices you. And I've gone through it
25 in pretty thoroughly, I think, and come to the conclusion that

1 you're not prejudiced. I think it is true, just as one should
2 not authorize a disclosure statement to go out if you don't
3 believe that there's any chance of the plan being confirmed,
4 because the debtor's asking for certain relief. I think there
5 is some threshold inquiry I need to make here to let this
6 settlement be binding as to those who didn't object. And to
7 some extent, although I think it's a pretty low inquiry, to
8 grant the other relief provided here, which is really
9 procedural as opposed to anything else. But certainly there
10 has to be some threshold inquiry on my part to bind those who
11 didn't object.

12 MR. BRILLIANT: Your Honor, as I said earlier, we
13 don't believe under the Iridium decision in the Second Circuit,
14 you know, given the fact that, you know, the settlement, you
15 know, changes priority that it meets that minimum threshold.
16 You know, as we had said in our limited objection, we tried to
17 work out, you know, the form of an order that we thought would
18 be more appropriate here. We, as Your Honor had said, you
19 know, don't have a problem with, you know, the debtor saving
20 money by only having, you know, by approving the class
21 settlement and allowing the, you know, the class
22 representative, you know, to vote rather than having to have,
23 you know, the votes from all the parties. But we don't believe
24 that, you know, that the order adequately reflects it. Now, I
25 understand what Your Honor is saying. And I ask you to turn to

1 paragraph 1 as well.

2 THE COURT: Okay.

3 MR. BRILLIANT: And the paragraph 1, you know, starts
4 off keeping in mind, you know, the caption of the order as I
5 already pointed out. And it says the settlements proposed in
6 the motion are preliminarily approved. And it's, you know, we
7 had said to them well, no, it's not preliminarily approved, you
8 know, the Court is not making findings of fact that it's fair
9 and equitable that it meets the standards of 9019 and Iridium.
10 All the Court is really doing is approving certain relief
11 herein.

12 We had proposed that after the words " preliminarily
13 approved," language be added that says "solely as to the relief
14 granted in this order." And the debtors told us no, they won't
15 do that, it is being preliminarily approved. Now, we said
16 well, we can't agree that it could be preliminarily approved,
17 because it doesn't meet the standards to be preliminarily
18 approved. You know, they're --

19 THE COURT: I'd put in "to the extent provided
20 herein." I mean, I'll hear from the debtors on that, but I
21 don't have a problem with that.

22 MR. BRILLIANT: Your Honor --

23 THE COURT: And then carrying on with the rest of it,
24 which does have the language about final consideration at the
25 confirmation hearing, but I understand your argument on that

1 point.

2 MR. BRILLIANT: You know, Your Honor, with respect to
3 paragraph 4 and paragraph 8, you know, we ask that the language
4 here which deals with the allowance for voting purpose, we
5 thought it should trap Rule 3018. And in the second line after
6 the word "hereby," we proposed putting in the word
7 "temporarily," which is the language of 3018. When you approve
8 allowance to vote under Rule 3018(a), you were doing it
9 temporarily. It's not on a permanent basis. And then we --

10 THE COURT: But doesn't the clause "solely for the
11 purpose of" govern that? I mean, it is temporary because it's
12 only for that purpose. It's actually clearer than saying
13 temporarily, because the plaintiffs could say well, you know,
14 temporary for how long?

15 MR. BRILLIANT: Well --

16 THE COURT: For five minutes? For five years? I
17 mean, I think this is more specific and clear.

18 MR. BRILLIANT: You know, Your Honor, our view is
19 that Your Honor really shouldn't approve this until November
20 8th when you know what the plan is, and you should only do it
21 in connection, you know, with that plan. And if that plan's
22 not confirmed then the authority would disappear, which is the
23 way --

24 THE COURT: I think if they were going to -- and
25 again, this is done in the same sentence. They say in the next

1 paragraph that that claim will be classified in its own class.
2 If they weren't going to do that, I would agree with you. But
3 I think as long as it's in one class, it's not adversely
4 affecting anyone else's right to vote. And it really is parked
5 up there as the settlement to the extent that that's going to
6 be approved as part of the plan. I just don't see how anyone's
7 real voting rights are affected by that.

8 MR. BRILLIANT: Your Honor, in paragraph 12, which is
9 the, you know, the termination provisions here. You know, the
10 voting rights, as we discussed earlier, you know, they continue
11 for this plan, any amended plan, or any other plan that
12 contemplates the stipulation. Effectively, this preliminary
13 approval, you know, doesn't ever terminate. If you do an
14 interim DIP order, you have a final hearing, it terminates at
15 the end of the, you know, final hearing, whether it's approved
16 or it's not approved.

17 We had proposed, and it's not too different than Your
18 Honor's question about what is it exactly that is going to
19 happen, you know, at the confirmation hearing that there be,
20 you know, a third issue here and that the right to continue to
21 have the right to vote would terminate if the relief sought in
22 the motion is not granted at the final hearing regarding the
23 proposed settlement. So that it's not a situation where you
24 get to the confirmation hearing and the motion, you know, is
25 not ruled on or it's withdrawn and this just continues to be

1 out there as a preliminary approval, you know, of the
2 settlement.

3 It should terminate as a matter of law if it's not
4 approved on a final basis by Your Honor, you know, at the
5 hearing on the motion, which will occur contemporaneously to
6 the confirmation hearing. The way they have it currently it
7 would only terminate if either the debtors or the class action
8 plaintiffs were to terminate it as provided under these, you
9 know, here in the paragraph. And we didn't think that that was
10 appropriate. If it's a preliminary order with certain
11 procedural relief, it should be limited in scope to, you know,
12 our view, you know, one plan and to a limited period of time.

13 THE COURT: You don't understand that it says "or is
14 otherwise terminated pursuant to applicable law as determined
15 by a court of competent jurisdiction."

16 MR. BRILLIANT: So, but, Your Honor, you know, no one
17 should have to file a motion to terminate this. If it's not
18 approved on a final basis, it should be terminated.

19 THE COURT: I really think you're splitting hairs
20 here. As a practical matter, you can conceive of situations
21 where a court would say something needs to be adjusted here to
22 make it work. And that something may not necessarily be in the
23 settlement. It may be somewhere in the plan. And someone else
24 may be willing enough, because their economic stake in having
25 the plan be confirmed, that they'll make the adjustment, not

1 the settling parties. That's conceivable.

2 On the other hand, when push comes to shove that's
3 not going to happen, it's going to be pretty easy, I think, for
4 the parties to decide this is a waste of time. And if they
5 can't decide it then the Court will say the stipulation's over.
6 But I don't see why you need to make it as brittle as you want
7 to make it. I think there needs to be some flexibility here
8 because, as everyone acknowledges, this is built into an
9 overall set of transactions that the debtor wants to have
10 confirmed as part of its plan.

11 But I think no one would dispute that before a plan
12 gets confirmed there may well be some adjustment to that
13 overall set of transactions. I mean, this isn't saying I
14 think, what you're afraid of, which is that it's locked in
15 forever at the debtors and the settling party's discretion. It
16 has termination by a court of competent jurisdiction and
17 everyone's subject to the requirements of the Bankruptcy Code
18 as well as the requirements that the district court has to
19 apply when it does final approval.

20 MR. BRILLIANT: Your Honor, I think, you know --

21 THE COURT: I certainly wouldn't want to put a
22 harness around the district court and say that, you know, one
23 element of the settlement, which is this voting right,
24 terminates if the district court disapproves the settlement.
25 Because, as we all know, sometimes when there's a legitimate

1 objection to a settlement, people scratch their heads and say
2 well, you know, maybe we can adjust things to deal with that.
3 And I just think that that's all the -- I can understand if
4 that's the rational for the debtors opposing your change. And
5 again, if there's some ulterior purpose, that can be dealt with
6 under the appropriate circumstances.

7 MR. BRILLIANT: I guess, Your Honor, you know, in
8 sum, you know, given the, you know, the extraordinary relief
9 here that, you know, they wanted on an interim basis,
10 preliminary basis against, you know, parties here that we
11 believe aren't in violation at all, we don't think that any
12 order should be entered to the extent that Your Honor does
13 decide that some kind of preliminary order is appropriate. We
14 would like, at a minimum, that it be clarified to provide that
15 the relief that's being granted is only with respect to the
16 specific procedural terms here and that it's not being approved
17 on a preliminary basis, you know, as being fair and equitable,
18 meeting the 9019 and the Iridium standards. We just don't
19 believe that they have met that, can meet that, will be able to
20 meet that, whether it be today or at the final hearing and we
21 would not want them to be able to use this to, you know,
22 bootstrap any arguments they would have at a final hearing.

23 THE COURT: Okay.

24 MR. BUTLER: Your Honor, two preliminary matters in
25 responding. First, Mr. Brilliant in his comments led off, in

1 addition to the Iridium argument -- led off with the fact that
2 he believed that this was a concealed attempt under 3018(a) to
3 have these claims allowed as members of the general unsecured
4 claims class and to vote general unsecured claims. I think
5 Your Honor disposed of that when you looked at the actual
6 language in paragraph 4. I mean, the words were carefully
7 chosen here and carefully negotiated. And the order, if Your
8 Honor approves this -- the securities' allowed claim in
9 interest could only be voted in a separate class. It's an
10 imperative the way it's drafted: "shall be in a separate
11 class". There is no effort here to have this be a disguised
12 3018(a) determination of moving the MDL plaintiffs or the lead
13 plaintiffs into the general unsecured class.

14 The second point I just wanted to make so we do have
15 the basis of the record here: we did provide exhibits for this
16 particular hearing which are simply the stipulations as
17 Exhibits 1 through 3; the Exhibit 4 with the change of the
18 bifurcation change of procedure outline that went to the
19 parties including Mr. Brilliant. Exhibit 5 and 6 are the
20 district court preliminary approvals, and I do think it's
21 instructive for Your Honor to be able to look at Exhibit 5, the
22 preliminary approval that Judge Rosen gave. He called his a
23 preliminary approval order too and it's quite clear that he is
24 holding his full fairness hearing and merits hearing in mid-
25 November. And then, finally, Exhibits 7 through 13 are the

1 motions, the objections filed, our reply, the former proposed
2 order and the blacklines and service matters. And so we do
3 have those on the record. I'd like to move Exhibits 1 through
4 13 into evidence.

5 THE COURT: Okay. Does anyone have any objection to
6 the admission of those exhibits?

7 MR. BRILLIANT: No objection, Your Honor.
8 (Stipulations was hereby received as Debtor's Exhibit 1 - 3 for
9 identification, as of this date.)

10 (Bifurcation change of procedure outline was hereby received as
11 Debtor's Exhibit 4 for identification, as of this date.)

12 (District court preliminary approvals was hereby received as
13 Debtor's Exhibit 5 - 6 for identification, as of this date.)

14 (Motions, objections, blacklines, service matters was hereby
15 received as Debtor's Exhibit 7 - 13 for identification, as of
16 this date.)

17 THE COURT: Okay. They'll be admitted.

18 MR. BUTLER: Your Honor, with respect to the Iridium
19 matter and to the Second Circuit's announcement on that, I
20 think the Second Circuit was careful in their wording. I
21 concur with Mr. Brilliant's statements that the priority scheme
22 of the Bankruptcy Code is deemed by the Second Circuit as being
23 a most important factor or the most important factor generally
24 but the Second Circuit went to great length to not adopt the
25 per se rule -- I think it was at the Fifth Circuit at the time

1 in the opinion -- and this was in the context of a settlement
2 as opposed to being decided at the time of the plan of
3 confirmation hearing. And ultimately, in discussing this with
4 the creditors committee, we believed we addressed the Iridium
5 issue in part by having this considered in the context of the
6 confirmation hearing process. Certainly with Your Honor's
7 amendments, we understood that.

8 And we believe that if Your Honor examines the
9 stipulations, examines the plan that is on file, we believe
10 that that plan is capable of confirmation and ultimately, when
11 we look at the Iridium case, I certainly don't see the Iridium
12 case in any respect as a bar on this Court or providing this
13 Court with a bar to making the determination now that this is
14 capable of approval at the merits hearing in connection with
15 the confirmation hearing here and therefore, Your Honor, we
16 believe that this preliminary relief ought to be granted. We
17 think it's been carefully crafted with our statutory committees
18 and other parties in interest other than Mr. Brilliant's group
19 to try to achieve that and we think this is an extremely
20 important element of the overall fabric of settlements here.

21 This is a case which has just a multitude of
22 settlements in it. It is a real challenge for the debtors to
23 try to maintain all of those settlements as people's economic
24 interests change and claims trade and other matters occur here
25 and it's not always entirely clear to the debtors positions

1 people take and why they take them but we believe there is, as
2 a matter of law, nothing in the Second Circuit Iridium decision
3 that would prevent this Court from making the determinations
4 today and we believe that, based on the evidentiary before Your
5 Honor as it relates to the actual substance of the settlements
6 and what they're trying to accomplish and how they're being
7 processed, that you can make the same kind of preliminary
8 approval in the bankruptcy context that Judge Rosen was able to
9 make in the district court securities context, which is a
10 determination that it is appropriate to proceed with the
11 procedural relief set forth in this order and that Your Honor
12 will consider, at the confirmation hearing, any valid
13 objections raised by any of the parties in interest who
14 retained their rights to object, which includes Mr. Brilliant's
15 clients.

16 THE COURT: Okay. All right. I have before me a
17 modified motion by the debtors seeking certain relief now in
18 connection with their proposed settlement with class plaintiffs
19 in the MDL litigation pending in Michigan embodied in three
20 stipulations: the securities stipulation, the ERISA
21 stipulation and the insurance stipulation. Originally, the
22 debtors sought approval of this settlement under Rule 9019 and
23 Section 363(b) of the Bankruptcy Code gave parties in interest
24 a deadline to object to the merits of the settlement and
25 scheduled a hearing thereon. Certain parties in interest

1 sought an extension of the deadline and/or were granted an
2 extension of the deadline to object and had persuaded the
3 debtors that, as to those entities who did receive an extension
4 of the deadline to object, that that deadline would be further
5 extended to the same date as the date for objecting to
6 confirmation of the debtors' plan of reorganization.

7 It's contemplated that that plan would include as a
8 condition or be premised upon, among other things, the
9 implementation of the MDL settlement. And the objecting
10 parties or the potentially objecting parties persuaded the
11 debtor that their objections, if any, should be heard in the
12 context of the particular plan that would be premised in part
13 upon the settlement. Among other things, that makes sense
14 because the Bankruptcy Code permits parties in their vote on a
15 plan as a class to express their preference for altering the
16 priority scheme otherwise set forth in the Bankruptcy Code and
17 an element of this settlement, it is argued and it may well be
18 the case, does just that.

19 So, as far as the relief that's being sought today,
20 the debtors have been careful to make it clear throughout, and
21 the record certainly should be clear after this morning's
22 hearing, that as to the potentially objecting parties, and they
23 are listed in the proposed order, their rights to object to the
24 proposed settlement and of course their rights to object to the
25 proposed plan, too, are fully preserved.

1 Today, therefore, the debtors are seeking approval of
2 the settlement in the following respects: first, provisional
3 certification of the securities and ERISA classes for purposes
4 of voting on a plan that would incorporate the MDL settlement
5 for solely those voting purposes, allowance solely for those
6 voting purposes of the claims of those two classes as set forth
7 in the MDL settlement or the proposed settlement and that the
8 settlement be binding on those who did not object to it.

9 As a lesser matter, the Court is also being asked to
10 modify the automatic stay or the conditions of previous
11 modifications of the automatic stay in the previously agreed
12 order regarding discovery that would lift the automatic stay
13 with respect to documents previously produced by the debtors to
14 the securities' lead plaintiffs under that agreed order so long
15 as the settlement has not been terminated for use as
16 contemplated in the settlement.

17 The modified relief that the debtors have sought is
18 unopposed except by an ad hoc group of plaintiffs who contend
19 that they hold an aggregate of not less than 420 million
20 dollars, an aggregate principal amount of senior notes. They
21 had previously objected to the settlement on its merits
22 contending that it should not be approved in that it would
23 treat the allowed claims of the settling classes pari passu
24 with the allowed claims of other unsecured creditors
25 notwithstanding Section 510(b) of the Bankruptcy Code.

1 Obviously, that objection is fully preserved as I
2 said earlier but this ad hoc group represented by Goodwin
3 Procter has taken the position that the entry of the order that
4 the debtors are currently seeking, notwithstanding the
5 intention as set forth on the record to fully preserve its
6 objection, would prejudice the objection.

7 I, as perhaps indicated by my remarks during oral
8 argument, do not accept that logic. I believe that as amended
9 on the record, it's crystal clear that the ad hoc group's
10 rights to object to the settlement and to any plan premised
11 upon in part the settlement are fully preserved as are the
12 rights of the other potentially objecting parties.

13 As I noted, the only potential risk of prejudice to
14 the objecting group as well as the potential objecting parties
15 could have been in the allowance for voting purposes of the
16 claims of the class representatives. However, given that those
17 claims will be set forth in a separate class, they would in no
18 way dilute the votes of the Goodwin Procter group or any other
19 potentially objecting party or any party who wished to vote
20 against the plan, to the extent that the separate classes
21 consisting of the ERISA class representative and the securities
22 class representative would be the only accepting classes in
23 connection with the plan. I would of course at that point
24 consider whether those classes would count and, as a practical
25 matter for reasons I'll get into in a moment, the issue would

1 in all likelihood be moved because it would reflect a negative
2 vote by every other class on the plan, which would have, in my
3 mind, a dramatically adverse effect on my likelihood of
4 approving the settlement.

5 But that, as the parties I think all recognize, is a,
6 at this point, highly hypothetical question and illustrates why
7 it was a very good idea to permit the objecting parties to have
8 an extension of their time to object so that everyone can see
9 the actual result of the vote on the plan and determine whether
10 to make their objection in light of that vote.

11 So I do not see a basis for the Goodwin Procter group
12 to sustain an objection to the relief that's being sought
13 today. I do have to consider the merits of the settlement in
14 some respect, I believe, today, however, in that the debtors
15 are seeking to preclude those who did not object or get a
16 timely extension of their right to object to the settlement.

17 And secondly, I need to consider the settlement as
18 did Judge Rosen in this limited extent to determine whether it
19 is appropriate at this point to certify a class for settlement
20 purposes and whether the settlement is sufficient to warrant
21 the allowance of the class vote for voting purposes. Let me
22 deal with that point first.

23 I can certainly conceive of circumstances pursuant to
24 which the requisite majorities in number and amount of
25 unsecured creditors would vote in favor of a plan premised

1 upon, among other things, this settlement. The temporary
2 allowance for voting purposes of the class representatives'
3 votes pursuant to this proposed order would facilitate
4 confirmation of a plan that was otherwise approved by the
5 requisite majorities of unsecured creditors. As I said before,
6 I believe it would have very little if no effect on
7 confirmation of a plan if the vote was a no-vote by the
8 requisite majorities of the unsecured creditors in the
9 unsecured creditor class, particularly if that was coupled with
10 a cogent objection to the settlement by the potentially
11 objecting parties.

12 So it certainly seems to me advisable to temporarily
13 allow the votes as provided in the proposed order to see if
14 that process will play out.

15 As far as approving the settlement over the
16 nonobjection of the nonobjecting parties and recognizing that,
17 as set forth in the order this approval is only as to them and
18 not to the potentially objecting parties or to the Goodwin
19 Procter group, I conclude that the settlement can indeed be
20 approved as to the nonobjecting parties in light of and first
21 and foremost because of the fact that after due notice they did
22 not object. In assessing a proposed settlement under
23 Bankruptcy Rule 9019(a), the Court's review reflects a tension
24 between, on the one hand, that in reviewing the settlement
25 agreement the Court is not required to conduct a mini-trial of

1 the compromised issues and claims, and on the other hand that
2 the Court may not simply rubber stamp the recommendations of
3 the trustee or debtor in possession but instead must make an
4 independent assessment of the wisdom of the proposed
5 compromise.

6 The Second Circuit has identified factors that should
7 guide the Court's inquiry in resolving that tension that are
8 based upon the factors set forth by the Supreme Court in the
9 TMT Trailer Ferry case, 390 U.S. 414, 424-425 (1968). I am of
10 course also guided by the Second Circuit's recent opinion in In
11 re Iridium Operating LLC, 478 F.3d 452 (2d Cir. 2007) in which,
12 where a settlement was opposed, the Second Circuit said that
13 whether the settlement is fair and equitable is the primary
14 consideration for the court if in fact the settlement does
15 violate the fair and equitable rule as a term of art under the
16 Bankruptcy Code, that is, would alter the absolute priority
17 rule set forth in the Code.

18 Two things in this context, I think, are worth noting
19 about the Iridium opinion. First, as Mr. Butler noted, the
20 Second Circuit was careful to say that while satisfaction of
21 the fair and equitable test is a primary, if not the primary,
22 matter upon which the court should focus, it is not the only
23 consideration and indeed the fact that a settlement violates
24 the fair and equitable rule does not necessarily doom it upon a
25 proper showing.

1 Second and equally important, the Iridium settlement
2 was opposed and it has long been recognized that particularly
3 where there is an arm's-length settlement, and it does appear
4 to me that this was an arm's-length negotiation following an
5 extensive mediation process in the district court, the Court
6 should pay great attention to the paramount interests of
7 creditors and in proper deference to their reasonable views.
8 Indeed, if creditors have been properly noticed and apprised of
9 the circumstances surrounding the settlement, the creditors'
10 failure to object indicates an informed judgment in support of
11 the settlement. See *In re Remsen Partners, Ltd.*, 294 B.R. 557,
12 567 (Bankr. S.D.N.Y. 2003).

13 On that basis, I conclude that those who failed to
14 object are properly bound by this settlement, which was
15 explained extremely thoroughly in the motion. It may be also
16 at the end of the day in light of the class vote that the same
17 or similar considerations will apply in respect of any other
18 objection, which is, as I said before where I believe,
19 particularly given the protection set forth in this order, the
20 matter can proceed to the next stage.

21 So consequently, I'll grant the modified relief that
22 was sought.

23 MR. FOX: Your Honor, can we clarify one point,
24 please?

25 THE COURT: Sure.

1 MR. FOX: Your Honor, Wilmington Trust Company as
2 indentured trustee represents the interests of all bondholders
3 in connection with this matter so when Your Honor says that
4 you're approving the settlement as to parties who have not
5 objected, I want it to be clear that, to the extent Wilmington
6 Trust files an objection and that objection is sustained, that
7 that applies to all bondholders.

8 THE COURT: I understand your concern. You can
9 voice -- the bondholders under the indenture give Wilmington
10 Trust the right, just as they do to file proofs of claim to
11 make an objection on their behalf.

12 MR. FOX: Thank you, Your Honor.

13 THE COURT: I do want to say, because as you can
14 tell, I take the views of creditors very seriously, that in
15 this context in particular, I think the Goodwin Procter group
16 would be well advised -- and this can be done pursuant to
17 proper procedures -- to clear up any issue as to whether, if
18 they are going to pursue their objection in the future, their
19 interests truly are in the class that they say they're in and
20 not affected by other interests elsewhere, the type of concern
21 I don't really have with regard to an official creditors
22 committee or an indentured trustee.

23 As far as the order is concerned, there are a couple
24 of provisions in this that I put a question mark next to and I
25 want to discuss them with you briefly. In a couple of places,

1 and I know this is set forth in the settlement agreement and I
2 know it's also set forth in Judge Rosen's order, I believe,
3 too, which is fine, it states that the lead plaintiffs and the
4 ERISA lead plaintiffs shall vote in favor of the plan. I'm a
5 little uncomfortable with that. They've agreed to do so. The
6 settlement's only effective if they do so but I'm uncomfortable
7 in directing them to do so and I would prefer it to say "have
8 agreed to cast any and all votes" as opposed to "shall cast any
9 and all votes".

10 MR. BUTLER: (Indiscernible) I'd hate to do otherwise
11 and I think we would surely take the position, and Mr. Utland's
12 (ph.) present in the courtroom, that if they didn't, they'd be
13 violating the settlement --

14 THE COURT: Well, they would be and I think they'd
15 also be violating Judge Rosen's order but for a bankruptcy
16 court to direct someone to vote is somewhat problematic.

17 MR. BUTLER: I don't have a problem with that, Your
18 Honor.

19 MR. SPEAKER: Your Honor, I would only have the
20 caveat that that agreement is premised on the plan being
21 consistent within --

22 THE COURT: Right. It has to have the settlement in
23 it.

24 MR. SPEAKER: Right.

25 THE COURT: Right.

1 MR. SPEAKER: So with that caveat, yes. That's what
2 we agreed to.

3 THE COURT: Okay.

4 MR. BUTLER: I think, Your Honor, we were actually --
5 the purpose of that and I'm perfectly acceptable -- understand
6 the change. The purpose of that was in some respects to, you
7 know, to insulate the lead plaintiffs. I mean, they're acting
8 pursuant to a district court order and pursuant to an
9 agreement --

10 THE COURT: Right.

11 MR. BUTLER: -- and we had thought that we should
12 carry that forward but I understand the distinction.

13 THE COURT: Okay. So where that comes up, and it
14 comes up in a few places, I've deleted it or said that they
15 have agreed to do so as opposed to -- I've also put in, where
16 their claims are allowed for voting purposes, that they're
17 granted an allowed claim or in the case of ERISA class an
18 allowed interest in these cases and I've added the phrase
19 "under the terms of the ERISA stipulation or under the terms of
20 the other stipulation" which makes it clear it's all in
21 connection with the settlement.

22 MR. BUTLER: Yes, Your Honor.

23 THE COURT: Okay. All right. So I'll make those
24 changes to the order and it will get entered.

25 MR. BUTLER: Thank you, Your Honor.

1 MR. BRILLIANT: Your Honor, Allan Brilliant on behalf
2 of the, you know, five, you know, those that I had mentioned
3 earlier. In the colloquy we had at the podium, you had also
4 indicated you were going to make a change to paragraph --

5 MR. COURT: Oh, that's in there. Yeah, that's in
6 there.

7 MR. BRILLIANT: Okay. Thank you, Your Honor.

8 MR. COURT: The one that says "to the extent provided
9 herein"?

10 MR. BRILLIANT: Yes, Your Honor.

11 THE COURT: Yeah. Okay.

12 MR. BUTLER: And on number 10, Your Honor?

13 THE COURT: Yes.

14 MR. BUTLER: Your Honor, the tenth matter on the
15 omnibus agenda today is the twenty-first omnibus claims
16 objection at docket number 9535. Your Honor, in this omnibus
17 objection, there were 209 proofs of claim that were dealt with
18 on the objection and of those 209 claims, we received responses
19 covering sixty-one of those proofs of claim.

20 With respect to the sixty-one claims covered by
21 responses, one of the respondents -- International Rectifier,
22 proof of claim number 13788 -- consented to the relief
23 requested of the debtors so that would -- if you subtract the
24 sixty responses, that would bring you down to 149 proofs of
25 claim that we'll actually seek relief with today.

1 Reconciling another way, there were sixty-one
2 responses covered by the -- or sixty-one proofs of claim
3 covered by the responses; one settled, as I just described. We
4 also withdrew an objection and that would be with respect to
5 the CTS Corporation proof of claim at claim number 11256. That
6 was due to reconciliation there that we're going to correct and
7 we'll deal with that in a subsequent objection moving forward
8 but we did need to correct the reconciliation error that was
9 pointed out to us.

10 So, Your Honor, in today's hearing we'll actually ask
11 Your Honor in the order and our reply and the charts we provide
12 consistent with these omnibus objections -- we'll move forward
13 fifty-nine proofs of claim asserting liquidated damages or
14 approximately sixty-three million dollars to the claims track
15 and we'll deal with those in the regular custom in these cases
16 in the claims track.

17 At today's hearing, we'd ask Your Honor to grant
18 relief with respect to 149 claims that assert liquidated
19 damages for approximately 34.4 million dollars, specifically,
20 Your Honor, we'd ask the Court to expunge 36 of these claims
21 with an asserted claim amount of approximately 21.1 million,
22 and with respect to the remaining 113 claims we'd assert
23 approximately 13.3 million dollars.

24 We are seeking various modifications including
25 identifying the debtor against whom the proof of claim is

1 asserted, the class, the amount of the claim, reducing the
2 amounts of the claim and so forth. There is approximately an
3 aggregate reduction in those claims of about 1.9 million
4 dollars, reducing them in the aggregate from 13.3 million to
5 11.4 million.

6 As Your Honor has inquired in prior hearings, we do
7 do the particularized notices that Your Honor wants in these
8 cases with respect to these things so that an objector
9 understands if their claim is being objected to and if Your
10 Honor grants the relief today, we will send out with the order
11 a particularized notice to the objectors whose claims are
12 affected by the relief being granted.

13 THE COURT: Okay. And I think you said this but I
14 just want to make sure, you incorporated into this order the
15 agreements that you reached with the few people who you've
16 agreed with?

17 MR. BUTLER: Yes, Your Honor.

18 THE COURT: Okay. All right. Does anyone have
19 anything to say on the omnibus objection? All right. I will
20 grant the omnibus objection as modified. As modified, it
21 covers claims that have been settled following the notice of
22 objection and also claims where the claimant has not opposed
23 the debtors' objection after individual notice. Based on my
24 review of the objection, the objection was sufficient to shift
25 the burden to the claimant to object to support his claim and

1 where they have not done so, their claim's properly either
2 disallowed or modified as provided in the objection.

3 MR. BUTLER: Thank you, Your Honor. Your Honor, the
4 next matter on the agenda, matter number 11, is the DASHI
5 intercompany transfer motion. We filed this at docket number
6 10484. There was a preliminary objection from Wilmington Trust
7 who filed a document number 10564 which has been resolved and
8 there have been comments to the relief requested by both our
9 DIP lenders and by the PBGC which have been accommodated in a
10 form of proposed modified order.

11 Your Honor, in connection with this motion, what we
12 are seeking from the Court today is a confirmation of DASHI's
13 authority to consummate an intercompany transfer to DAS, LLC.
14 DASHI is in the process of accumulating cash balances from
15 nondebtors in the company's global corporate structure in an
16 amount that's expected to be up to 650 million dollars and upon
17 accumulation of those funds or after that process is completed,
18 DASHI intends to effectuate a transfer of those funds under the
19 cash management order entered in these cases to DAS, LLC.

20 We believe that this is in fact, and have contended
21 throughout these cases, this is from the debtor's view nothing
22 more than an ordinary course transaction for us. We move cash
23 balances around our entire system on a regular basis; this one
24 is a larger one. It's a larger one because it's no surprise, I
25 think, to any of the parties in this case who've been following

1 the case, that the debtors' North American business operations
2 are a consumer of cash and the global business operations have
3 been generally a generator of cash.

4 And, ultimately, we are in a position now where we
5 have moved for the first time recently in recent months in
6 being a constant net borrower under the DIP Revolver, you know,
7 within the debtor entities and generating interest expense that
8 could be saved simply by, in fact, repaying that with cash that
9 the company has. The company has a very significant amount of
10 cash in its global -- globally and on a consolidated basis and
11 is in a position, as it has been throughout these cases, to
12 manage its business in the ordinary course of its business, you
13 know, in an area that the company -- and has owned the company,
14 continues to believe is quite comfortable in terms of the cash
15 that we have and the ability to fund our operations globally.

16 The company chose to make this transfer to respect
17 the terms of the cash management order that Your Honor entered.
18 We have been guided throughout these cases by the colloquy that
19 Your Honor had with us at the time of the first day hearing and
20 as the orders were amended after the creditors committee was
21 appointed in those discussions, in which Your Honor made clear
22 to us that you expected that we would -- the company would
23 exercise a reasonable business judgment from the perspective of
24 each of the various entities involved in these transactions to
25 make sure that these transactions made sense and were

1 reasonable from the various perspectives of the various
2 entities and that any transfer like these is subject to a lien
3 junior to the DIP lenders but still subject to a lien or a
4 priority.

5 And therefore we chose to move forward with this. We
6 shared this information with our statutory committees. Our
7 committees, in particular the creditors committee, asked us to
8 bring this on for motion. We did so notwithstanding the fact
9 we believe it's completely authorized by the cash management
10 order but, as Your Honor knows, when you're in the middle of
11 plan time and lots of people's interests are being subject to
12 adjustment and compromise, it's a period in any
13 Chapter 11 case, certainly in a large Chapter 11 case, where it
14 is, as I sometimes think, difficult to do much of anything in
15 the ordinary course of business even if it is.

16 So we brought this motion on. We have had extensive
17 discussions with the parties. I am pleased to report, Your
18 Honor, that it is no longer contested. We dealt with the
19 Pension Benefit Guaranty Corporation issue which is, you know,
20 in some respects, a fascinating issue as a matter from a legal
21 perspective but an issue frankly the debtors didn't want to
22 have to actually deal with here. And while I would, you know,
23 in a classroom or in some other context love to debate the
24 extraterritorial rights of the PBGC, the fact of the matter is
25 Delphi did not want and does not want to take on that burden,

1 particularly given the fact that we have been quite
2 appreciative of the relationship that we've developed with the
3 PBGC during the course of these cases which has led to, among
4 other things, the waivers that we have received, the
5 preservation, the ability to actually preserve the pensions in
6 this case and we have worked cooperatively with them both in
7 their individual capacity and in their membership in the
8 creditors committee.

9 And so what we have chosen to do and what the order
10 reflects is a conditional adequate protection grant that
11 basically gives them a grant of adequate protection and a lien
12 junior to the liens of the DIP lenders that will become
13 effective, and this was the DIP lenders' comment late last
14 night that the PBGC has agreed to that will become effective
15 upon the transfer of the accumulative cash described in
16 paragraph 4 of the order, of the proposed order, and it is
17 conditional in the sense that if we ever have to argue it, we
18 can in fact -- if it ever becomes necessary, we can have the
19 debate and the proceeding in this Court and ask Your Honor to
20 address the extraterritorial and other issues. It is an
21 argument and a debate that I firmly believe we should never
22 have to have and hope we never will.

23 So that we were appreciative that and we respected, I
24 must tell you, the view that this was, and at least we would
25 call it -- I'm not sure the PBGC would call it this -- but we

1 believe this to be a program or policy issue, an agency issue
2 for the PBGC where they needed to preserve this issue. We
3 understood that and were pleased that the agreement in the
4 revised proposed order does that and provides them with the
5 conditional adequate protection to which they believe they're
6 entitled and to which we believe no one is prejudiced based on
7 the specific reservations of rights and the conditionality of
8 that. We're also pleased that our DIP lenders are satisfied --
9 our DIP agent is satisfied with the proposal as modified with
10 the language I've just described on the record.

11 With respect to Wilmington Trust in its capacity as
12 indentured trustee, this issue was also resolved both by an
13 agreement between Wilmington and the debtors to provide
14 Wilmington with information independently of the creditors
15 committee. It'll be the same information we're giving the
16 creditors committee but Wilmington Trust wanted to receive it
17 in its capacity as indentured trustee and to have -- and we
18 provided, agreed to a schedule of the information we would
19 provide them and the basis on which that would be pursued and
20 we've agreed that that need not be made a matter of public
21 record but it's satisfactory to Wilmington and it's
22 satisfactory to the debtors. It is subject to the protective
23 order and other agreements we have with them and will be deemed
24 highly confidential in terms of that transaction but it was --
25 we do appreciate Wilmington Trust's and Mr. Fox's work with us

1 to try to make sure that that information exchange works to
2 everyone's mutual satisfaction.

3 We also agreed to a provision in the order which we
4 have dealt with in other situations that indicates that neither
5 Wilmington nor we will use the granting of this relief
6 adversely as precedent against the other should we have to
7 argue about this in the future. And so we have had, I think,
8 that kind of understanding with them in other situations and
9 we're prepared to preserve that here and therefore have agreed
10 to do that as well.

11 There are, Your Honor, a brief number of exhibits in
12 connection with this particular transaction that we would
13 indicate, ask to have considered by the Court. Let me briefly
14 summarize those. Exhibits 1 through 4 are court documents
15 involving the motion, the objections and withdrawal of the
16 objection of Wilmington Trust and our reply.

17 We do have a declaration of Mr. Sheehan which has
18 been marked highly confidential as Exhibit 5.

19 Exhibits 6 through 8 are the motions and the orders
20 dealing with the cash management system that we've been
21 operating under during the pendency of these cases as well as
22 the DIP refinancing order that provides the senior lien issues
23 we've needed to respect in connection with the conditional
24 grant of adequate protection.

25 We have documented, designated for these purposes

1 some business records of ours, including the debtors' five-year
2 consolidated business plan which was filed as Appendix C to the
3 disclosure statement at docket number 9264. That's Exhibit 9.

4 Exhibit 10 is the liquidation analysis filed as
5 Appendix E to the disclosure statement at docket number 9264.

6 We have made a presentation regarding this matter to
7 both statutory committees on October 17, 2007, and this is
8 marked highly confidential as Exhibit 11.

9 We provided Your Honor draft minutes of Delphi
10 Corporation's board of directors to indicate the manner in
11 which this has been reviewed from a corporate governance
12 perspective and those are marked highly confidential. Those
13 are Exhibits 12 and 13 for the September 5th and 10th meetings.

14 And then we have provided information in Exhibit 14
15 regarding the amount of new business booked at the DAS, LLC
16 entity level.

17 A proposed order at Exhibit 15, which includes all of
18 the agreements reached now with Wilmington Trust, the PBGC and
19 our DIP lenders.

20 And Exhibit 16 is the affidavit of service.

21 Exhibit 17 is the Wilmington Trust -- is the
22 protective order, I should say, which we will be using for
23 purposes of exchanging information.

24 And Exhibit 18 is the letter agreement between
25 Wilmington Trust and DASHI which we've marked -- and the

1 company regarding any of the information exchanged -- we've
2 marked highly confidential but we wanted the Court to be able
3 to review it if it chose to in terms of the agreements between
4 the parties.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, we've moved the addition of
7 Exhibits 1 through 18.

8 THE COURT: Does anyone have an objection to the
9 admission of those exhibits?

10 MR. BROUDE: Your Honor, just briefly on items 9 and
11 10, the two exhibits, the disclosure statement -- I assume
12 those are being entered for demonstrative purposes only, not
13 for the truth of the matters therein?

14 MR. BUTLER: Well, they're being submitted as the
15 debtors' view of those issues.

16 MR. BROUDE: Okay.

17 MR. BUTLER: I mean, they're not binding on the
18 creditors committee --

19 THE COURT: Exactly right.

20 MR. BUTLER: -- or on any other party.

21 THE COURT: All right.

22 MR. FOX: Edward Fox, Your Honor, for Wilmington
23 Trust. I have no objection but in view of the fact that the
24 order does not constitute precedent for any further matters, I
25 reserve our rights with respect to cross-examination of Mr.

1 Sheehan or any other challenge to the exhibits in future
2 matters.

3 (Motion, objections, withdrawal of Wilmington Trust objections,
4 debtor reply was hereby received as Debtor's Exhibit 1 - 4 for
5 identification, as of this date.)

6 ((Confidential) Declaration of Mr. Sheehan was hereby received
7 as Debtor's Exhibit 5 for identification, as of this date.)

8 (Motions and orders re: cash management system, DIP refinancing
9 order was hereby received as Debtor's Exhibit 6-8 for
10 identification, as of this date.)

11 (Five-year business plan was hereby received as Debtor's
12 Exhibit 9 for identification, as of this date.)

13 (Liquidation analysis was hereby received as Debtor's Exhibit
14 10 for identification, as of this date.)

15 ((Confidential) Presentation re: liquidation analysis was
16 hereby received as Debtor's Exhibit 11 for identification, as
17 of this date.)

18 ((Confidential) Draft minutes of Delphi 9/5 and 9/10 board of
19 directors meetings was hereby received as Debtor's Exhibit 12 -
20 13 for identification, as of this date.)

21 (Info re: new business booked with DAS entity level was hereby
22 received as Debtor's Exhibit 14 for identification, as of this
23 date.)

24 (Proposed order was hereby received as Debtor's Exhibit 15 for
25 identification, as of this date.)

1 (Affidavit of service was hereby received as Debtor's Exhibit
2 16 for identification, as of this date.)

3 (Protective order was hereby received as Debtor's Exhibit 17
4 for identification, as of this date.)

5 ((Confidential) Letter agreement between Wilmington Trust and
6 DASHI was hereby received as Debtor's Exhibit 18 for
7 identification, as of this date.)

8 MR. COURT: Okay. I'm sure Mr. Sheehan is happy to
9 hear that and I take it no one else wants to cross-examine Mr.
10 Sheehan today? All right. I'll admit those exhibits for the
11 purposes that they've been offered for.

12 MR. BUTLER: Your Honor, I think with that
13 evidentiary record with Mr. Sheehan's declaration in the record
14 now and our presentation and the proposed order, we submit the
15 matter, Your Honor, for consideration.

16 THE COURT: Okay. Does anyone have anything to say
17 on this motion? Is there a problem in putting, in addition to
18 "valid, perfected and enforceable", putting an "and
19 nonavoidable" or "nonavoidable" in dealing with the liens?

20 MR. BUTLER: I don't think there is an issue from our
21 perspective, Your Honor.

22 THE COURT: Or "claims"? Okay. Again, the PGBC's
23 adequate protection replacement lien is only to the extent that
24 it is already in possession of a valid, perfected and
25 enforceable lien on such assets and I want to insert the phrase

1 "and nonavoidable" in a couple places and I think that's
2 implicit in "enforceable" but I wanted to make sure that was
3 the case. Okay. So that'll be in the order.

4 MR. BUTLER: And counsel for the PBGC has indicated
5 that's fine with them.

6 MR. SPEAKER: That's fine with us.

7 THE COURT: Okay. Great. Thank you. Okay, so that
8 will get entered today.

9 MR. BUTLER: Thank you, Your Honor. Your Honor, the
10 remaining matters on the agenda deal with the fifth fee
11 applications of professionals. These are items number 12
12 through 50 on the agenda. A total of thirty-nine professionals
13 have timely submitted applications with respect to the fifth
14 fee interim application period which ended on May 31st of this
15 year.

16 All these professionals were retained in these cases
17 by the debtors, the unsecured creditors committee, the equity
18 committee and the joint fee review committee. There is one
19 professional firm that has been retained in these cases and
20 that has not yet filed fee applications. We wanted the court
21 to be aware the Crowell & Moring, or antitrust counsel to the
22 debtors, were retained on March 9th, 2006 at docket number
23 2773. They were hired on a contingency fee basis. They've not
24 submitted any invoices to the debtors for payment at this time.

25 I'm pleased to report, Your Honor, that there are no

1 objections that have been filed to any of the interim fee
2 applications or before the Court today, but that should not in
3 any way suggest that there has not been a thorough review of
4 the applications before the Court. In fact, the fee review
5 committee has met on a number of occasions with each other and
6 have been through working with their -- the fee examiner or fee
7 auditor that is hired for them, and then they have been in
8 contact with all of the various applicants about their views.
9 They have worked out a consensual agreement regarding their
10 views with each of the professionals, which is reflected in the
11 proposed order that's been presented to Your Honor. I would
12 indicate Mr. Sherbin, who is chairman of the fee committee, is
13 here in Court today as is Mr. Sheehan who is present and we
14 have been advised that the other members of the committee also
15 join in these requests.

16 The one point I would just indicate is there is a
17 recommendation here that the holdback for the fifth fee period,
18 which goes back to the December period of last year -- excuse
19 me, the February through May period of this year -- that it be
20 released in connection with Your Honor's consideration of this.
21 That's been recommended by the fee committee if on this
22 record -- to say it is not objected to by the U.S. Trustee.

23 THE COURT: Okay.

24 MR. BUTLER: Which is, it has been reviewed by them
25 and there is no objection to that relief that has been sought.

1 Your Honor, the proposed order sets forth the, in
2 separate columns, the date of each fee application, the total
3 amounts requested, the amounts -- in each case the amount
4 recommended by the fee committee. Obviously there are blanks
5 for the columns for the Court's determination and the same is
6 true for charges and disbursements, both requested and sought
7 by the fee committee. And then there's a column of the total
8 voluntary reductions by the applicants. I would indicate that
9 there are in excess of 2.2 million dollars worth of voluntary
10 accommodations extended by the thirty-nine fee applicants,
11 either voluntarily in their applications or on a voluntary
12 basis after discussion with the fee committee and getting the
13 input from the fee committee and the fee committee's auditor
14 with respect to each individual fifth fee application.

15 With that in mind, Your Honor, Mr. Sherbin is here
16 and available to the Court to answer any questions on behalf of
17 the fee committee and I'm certainly available, both
18 individually for Skadden and also as counsel to the debtors, to
19 answer any questions you may have about these applications.

20 THE COURT: Okay. Does anyone have anything to say
21 on any of the fee applications?

22 MR. VELEZ-RIVERA: I'll address the Court from here,
23 Your Honor. Andrew Velez-Rivera for the United States Trustee.
24 This lender did advise me that indeed we adopt the view of the
25 fee committee and we have no objection to the releases and the

1 holdback which are reflected in our point of view.

2 THE COURT: Okay. Thank you.

3 MR. VELEZ-RIVERA: Thank you.

4 THE COURT: All right. When I suggested that a fee
5 committee be set up, my hope was that if it was, as I believe
6 it is, composed of sophisticated businesspeople who are used to
7 dealing with professionals' bills, that it would provide the
8 type of review that's necessary in a case of this size. From
9 what I see, that's the case. Obviously if parties in interest,
10 including the professionals, feel that for some reason it's not
11 working as contemplated, i.e., fairly but professionally, they
12 should let me know. But I meant to when this was set up, and
13 will, rely on those -- on the judgment of those businesspeople
14 as well as, of course, on the U.S. Trustee in their review of
15 the bills. So I will approve the interim applications as
16 sought and as unopposed by the parties and also believe that
17 for this last period the twenty percent holdback can be
18 awarded, subject of course to the continued process for
19 submitting bills and the holdback associated with those on a
20 going forward basis.

21 MR. BUTLER: Thank you, Your Honor. Your Honor, with
22 respect to the go forward basis, the sixth fee application
23 period did pass in September. It was completed in September.
24 Those applications will be filed at the end of November and the
25 company intends -- and we've talked briefly to Mr. Sherbin

1 about this -- that those would go on the same sort of number of
2 months, you know, down the line. Those would come onto the
3 February omnibus hearing, which would give them the same amount
4 of time for the fee committee to continue to review that.

5 It is, I think, likely going to be the recommendation
6 of the company that the seventh fee application period which
7 covers the period through the end of January and into February,
8 that that period, which would be October, November, December
9 and January -- that even though the confirmation being in mid-
10 January, that if we're able to maintain that schedule we will
11 most likely in connection with the hearing on the sixth fee
12 application ask Your Honor to not require the filing of fee
13 applications for the seventh period on an interim basis but
14 instead maintain those holdbacks and maintain those
15 applications as part of the final fee application process, so
16 that it would save the time and expense for the estate of
17 having all these professionals prepare yet another interim fee
18 application basis because at some point, we need to get to a
19 final fee application hearing and we respect that both you and
20 we believe the U.S. Trustee is going to want a holdback
21 maintained for the final fee hearing.

22 THE COURT: Okay.

23 MR. BUTLER: In some amount.

24 THE COURT: All right.

25 MR. BUTLER: And so we're -- that's sort of what

1 we're planning to do depending on the timetable of emergence
2 and how that coincides with the fee application periods but
3 there will be at least one more interim fee hearing which will
4 likely be in February of next year.

5 THE COURT: Okay. I know that some professionals may
6 have some pressure from their partners to get as much in by
7 year-end but I think the interim procedures strike an
8 appropriate balance on that, so what you've laid out sounds
9 fine to me.

10 MR. BUTLER: Thank you, Your Honor. Your Honor, that
11 completes the matters on the omnibus agenda.

12 THE COURT: Okay. Thank you.

13 MR. BUTLER: Thank you very much.

14 (Proceedings concluded at 12:07 p.m.)
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C E R T I F I C A T I O N

I, Sharona Shapiro, court approved transcriber, certify that
the foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the above-
entitled matter.

Signature of Transcriber

October 29, 2007
Date

Sharona Shapiro
typed or printed name